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ZUL AZUANDI AZIZ v. PP

HIGH COURT MALAYA, KANGAR
ARIK SANUSI YEOP JOHARI JC
[CRIMINAL APPEAL NO: RA-42S-2-07-2020]
14 MAY 2021

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CRIMINAL PROCEDURE: *Sentence – Appeal against – Conviction under s. 15(1)(a) of Dangerous Drugs Act 1952 – Accused sentenced to six years imprisonment, two strokes of whipping and two years police supervision – Whether prosecution failed to prove accused had previous convictions – Whether to prove one's previous convictions within power and competency of Registrar of Criminals for the Federation or any officer appointed by the Yang di-Pertuan Agong pursuant to s. 3 of Registration of Criminals and Undesirable Persons Act 1969 – Whether accused liable to be convicted and punished for offence under s. 15(1)(a) punishable under s. 39C(1) – Whether sentence ought to be set aside – Whether substituted with lesser punishment*

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CRIMINAL LAW: *Dangerous Drugs Act 1952 – Section 15(1)(a) – Conviction and sentence – Appeal against sentence – Accused sentenced to six years imprisonment, two strokes of whipping and two years police supervision – Whether prosecution failed to prove accused had previous convictions – Whether to prove one's previous convictions within power and competency of Registrar of Criminals for the Federation or any officer appointed by the Yang di-Pertuan Agong pursuant to s. 3 of Registration of Criminals and Undesirable Persons Act 1969 – Whether accused liable to be convicted and punished for offence under s. 15(1)(a) punishable under s. 39C(1) – Whether sentence ought to be set aside – Whether substituted with lesser punishment*

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The appellant was charged with an offence under s. 15(1)(a) of the Dangerous Drugs Act 1952 ('DDA') which was punishable under s. 39C(1) of the DDA for administering to himself methamphetamine. The appellant claimed trial to the said charge. At the conclusion of the trial, the Sessions Court Judge ('SCJ') found the appellant guilty of the said offence and sentenced the appellant to six years imprisonment, two strokes of whipping and two years police supervision. Dissatisfied with the conviction and the sentence imposed, the appellant appealed to this court against the whole decision of the SCJ. The issue that arose was whether the conviction and sentence passed by the SCJ was correct and in accordance with the law. The appellant submitted that the prosecution had failed to prove that the appellant had two previous convictions under s. 15(1)(a) of the DDA and that consequently, the appellant was not liable to be convicted and punished for the offence under s. 15(1)(a) of the DDA which was punishable under s. 39C(1) of the DDA. Hence, the sentence imposed by the SCJ under s. 39C(1) of the DDA ought to be set aside and substituted with a lesser punishment under s. 15(1)(a) of the DDA, in case the appellant's conviction under s. 15(1)(a) of the DDA was sustained.

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Held (allowing appellant's appeal):

(1) To secure a punishment under s. 39C(1) of the DDA, the onus lay on the respondent to prove that the appellant had two previous convictions under s. 15(1)(a) of the DDA, failing which the appellant would only be liable to a punishment provided for under s. 15(1)(a) of the DDA. For the purpose of proof of the appellant's two previous convictions under s. 15(1)(a) of the DDA, the respondent had tendered the appellant's records of conviction ('exh. P9') through the Assistant Registrar of the Kangar court (SP3). (paras 12 & 13)

(2) Section 400 of the Criminal Procedure Code ('CPC') provides that 'previous conviction' may be proved by an extract certified under the hand of the officer having the custody of the records of the court whether of Malaysia or the Republic of Singapore. However, the CPC does not define who is 'the officer having the custody of the records of the court ...'. as the CPC is a law of general application, reference has to be made to the Registration of Criminals and Undesirable Persons Act 1969, a specific law that governs matters pertaining to previous conviction, in order to determine who is the intended 'officer having the custody of the records of the court ...'. (paras 26 & 27)

(3) The Registration of Criminals and Undesirable Persons Act 1969 ('Act') is a specific Act enacted by the Parliament to provide for the registration of criminals. Only the Registrar of Criminals is authorised under the Act to keep and maintain the particulars of any conviction or sentence in respect of a registrable offence as specified in the First and Second Schedules of the Act. As the Act is a specific law regulating matters relating to the registration of criminals in this country, the said Act shall prevail over s. 400 of the Criminal Procedure Code ('CPC'), which is a general law. Thus, the respondent's submission on the admissibility of one's previous conviction under s. 400 of the CPC and the Evidence Act 1950 could not sustain. (paras 34 & 35)

(4) Since s. 400 of the CPC, which is a general law, does not define who is the 'officer' that can prove one's previous conviction, by reading such provision harmoniously with the Act, which is a specific law relating to the registration of criminals, it is apparent that the 'officer' referred to in the CPC is the Registrar of Criminals appointed by the Yang di-Pertuan Agong ('YDPA') under s. 3 of the Act, whose power among other things is to keep and maintain the particulars of any conviction or sentence in respect of a registrable offence as specified in the First and Second Schedules of the Act. To prove one's previous conviction under any law in this country, it is within the power and competency of the Registrar of Criminals for the Federation or any officer appointed by the YDPA pursuant to s. 3 of the Act, and no one else. (paras 37 & 38)

(5) Since there was no evidence that SP3 was appointed by the Yang di-Pertuan Agong pursuant to s. 3 of the Act, SP3 had no *locus*, qualification and competency under the Act to confirm, to tender and to prove the appellant's previous convictions under s. 15(1)(a) of the DDA in the court. Therefore, exh. P9,which was tendered by the prosecution to prove the appellant's two previous convictions under s. 15(1)(a) of the DDA was inadmissible and had no evidential value. As a result, the conviction and sentence imposed by the SCJ on the appellant under s. 15(1)(a) of the DDA which is punishable under s. 39C(1) of the same Act was wrong and not in accordance with the law and hence, should be substituted with a conviction and punishment under s. 15(1)(a) of the DDA. (paras 39 & 40)

(6) In passing the appropriate sentence, this court took into consideration that the appellant had spent 11 months in remand and he had no previous conviction. This court also took into consideration that under s. 15(1)(a) of the DDA, the court has the discretion to impose either a punishment of fine or an imprisonment. It would not be appropriate to put the appellant again behind bars. Therefore, a fine of RM3,000 from the maximum of RM5,000, in default five months imprisonment and two years police supervision under s. 38B of the DDA with effect from the date of the disposal of the appeal, would be the appropriate and just punishment imposed on the appellant, and it was not manifestly inadequate. (paras 43 & 44)

Case(s) referred to:
Abdullah Atan v. PP & Other Appeals [2020] 9 CLJ 151 FC ***(refd)***
Azizy Samsudin v. PP [2020] 1 LNS 1725 HC ***(refd)***
Mohd Azmeer Yusnar Romli lwn. PP [2020] 1 LNS 1681 HC ***(refd)***
PP v. Muhammad Zikiri Ramli [2021] 1 LNS 704 HC ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 400
Dangerous Drugs Act 1952, ss. 15(1)(a), 38B, 39C(1), First Schedule
Evidence Act 1950, ss. 57, 60
Registration of Criminals and Undesirable Persons Act 1969, ss. 2, 3, 7, First Schedule, Second Schedule

For the appellant - Devandran Subramaniam; M/s Devandran & Co
For the respondent - Mohd Izham Ali; DPP

[Editor's note: Appeal from Sessions Court; Criminal Case No: RA-62D-21-03-2019.]

Reported by Suhainah Wahiduddin

JUDGMENT

Arik Sanusi Yeop Johari JC:

Introduction

[1] The respondent in this case had appealed against the decision of this court in setting aside the conviction and punishment imposed by the learned Sessions Court Judge of Kangar on the appellant under s. 15(1)(a) of the Dangerous Drugs Act 1952 (Act 234) ("DDA") which is punishable under s. 39C(1) of the same Act and substituted it with a conviction and punishment under s. 15(1)(a) of the DDA.

[2] In this regard, the punishment of six years imprisonment from the date of remand, two strokes and two years police supervision passed by the learned Sessions Court Judge were substituted with a fine of RM3,000, in default five months imprisonment.

Background Facts

[3] The appellant was charged before the Sessions Court in Kangar on 15 March 2019 for an offence under s. 15(1)(a) of the DDA which is punishable under s. 39C(1) of the DDA. The charge reads as follows:

> Bahawa kamu pada 13/4/2017 jam lebih kurang 8.55 pagi bertempat di sebuah rumah beralamat No. 117, Lorong 1, Taman Utara Jaya Kuala Perlis di dalam Daerah Kangar, di dalam Negeri Perlis, telah didapati memberikan diri kamu sendiri dadah berbahaya iaitu Methamphetamine dan kamu juga telah mempunyai (2) rekod lampau kesalahan lampau di bawah seksyen 15(1)(a) Akta Dadah Berbahaya 1952 dalam kesalahan seperti berikut:
>
> (i) NO. KES MAHKAMAH KANGAR: 83D-495-2008
>
> Tarikh Hukuman: 29/1/2009
>
> (ii) NO. KES MAHKAMAH KANGAR: 83D-388-07/2014
>
> Tarikh Hukuman: 10/7/2014
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> Oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 15(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum dibawah seksyen 39C(1) Akta yang sama.
>
> Hukuman:
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> Jika sabit kesalahan hendaklah dipenjara tidak kurang daripada 5 tahun dan tidak lebih daripada 7 tahun dan dikenakan hukuman sebat tidak lebih dari 3 sebatan.

[4] Upon conviction, the appellant is liable to be punished with imprisonment for a term which shall not be less than five years but shall not exceed seven years, and shall also be punished with whipping of not more than three strokes.

[5] The appellant had claimed trial to the said charge. At the conclusion of the trial, the learned Sessions Court Judge had found the appellant guilty of the said offence and had sentenced the appellant to six years imprisonment, two strokes and two years police supervision.

[6] Dissatisfied with the conviction and the sentence imposed by the trial court, the appellant had appealed to this court against the whole decision of the learned Sessions Court Judge.

[7] After scrutinising and considering the records of appeal, the ground of decision of the learned Sessions Court Judge and the submissions by both parties, this court had affirmed the appellant's conviction under s. 15(1)(a) of the DDA but had substituted the sentence passed by the learned Sessions Court Judge under s. 39C(1) of the DDA with a fine of RM3,000 in default five months imprisonment under s. 15(1)(a) of the DDA.

[8] The appellant did not appeal against both conviction and sentence imposed by this court. Therefore, the appellant's conviction for the offence of administering to himself methamphetamine under s. 15(1)(a) of the DDA is sustained.

[9] The respondent however did not satisfy with the decision of this court in substituting the conviction and punishment of the appellant under s. 15(1)(a) of the DDA which is punishable under s. 39C(1) of the DDA with a conviction and punishment under s. 15(1)(a) of the same Act. Hence, this appeal.

Issues To Be Decided

[10] The issue to be decided in the appellant's appeal before this court is whether the conviction and sentence passed by the learned Sessions Court Judge under s. 15(1)(a) of the DDA which is punishable under s. 39C(1) of the DDA is correct and in accordance with the law.

Finding And Decision Of The Court

[11] In this case, the appellant was charged with an offence under s. 15(1)(a) of the DDA which is punishable under s. 39C(1) of the DDA for administering to himself methamphetamine. Methamphetamine has been categorised as dangerous drug under the First Schedule of the DDA. The provisions read as follows:

(i) Section 15(1)(a) of the DDA

15. Self administration

(1) Any person who:

(a) consumes, **administers to himself** or suffers any other person, contrary to s. 14 to administer to him **any dangerous drug specified in Parts III and IV of the First Schedule**; or

(b) is found in any premises kept or used for any of the purposes specified in s. 13 in order that any such dangerous drug may be administered to or smoked or otherwise consumed by him,

shall be guilty of an offence against this Act and shall be liable on conviction to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years. (emphasis added)

(2) ... .

(ii) Section 39C(1) of the DDA

39C. Increased penalty where person has prior admissions or convictions.

(1) Where a person who has not less than:

(a) two previous admissions;

(b) **two previous convictions under paragraph 10(2)(b) or paragraph 15(1)(a)** or any combination of the sections;

(c) one previous admission and one previous conviction under paragraph 10(2)(b) or paragraph 15(1)(a);

(d) one previous admission and two previous convictions under s. 31A; or

(e) one previous conviction under paragraph 10(2)(b) or paragraph 15(1)(a) and two previous convictions under s. 31A,

is found guilty of an offence under paragraph 10(2)(b), **paragraph 15(1)(a)** or s. 31A, he shall, instead of being liable to the punishment provided for that offence under the section under which he has been found guilty, **be punished with imprisonment for a term which shall not be less than five years but shall not exceed seven years, and he shall also be punished with whipping of not more than three strokes**. (emphasis added)

(2) ...

(3) ...

(4) ...

[12] Based on the above-mentioned provisions, it is the opinion of this court that to secure a punishment under s. 39C(1) of the DDA, the onus lies on the respondent to prove that the appellant had two previous convictions under s. 15(1)(a) of the DDA, failing which the appellant will only be liable to a punishment provided for under s. 15(1)(a) of the DDA.

[13] In this case, for the purpose of proof of the appellant's two previous convictions under s. 15(1)(a) of the DDA, the respondent had tendered the appellant's records of conviction (exh. P9) through the Assistant Registrar of the Kangar court (SP3).

[14] On the admissibility of the evidence of SP3 and exh. P9, the learned Deputy Public Prosecutor in his written submission submitted as follows:

5. Berdasarkan peruntukan seksyen 400 KTJ ini, jelas memperuntukkan terdapat 2 cara/(modes) iaitu:

(a) by an extract certified under the of the officer having the custody of records of the court whether of Malaysia or the Republic of Singapore which conviction or acquittal was had to be a copy of the sentence or order; or

(b) in case of a conviction either by a certificate signed by the officer in charge of the prison Malaysia or the Republic of Singapore in which the punishment or any part of it was inflicted, or by production.

6. Walau bagaimanapun, seksyen 400 KTJ ada memperuntukkan bahawa:

"in addition to any other mode provided by any law for the time being in force."

7. Pihak responden menghujahkan bahawa undang-undang memberikan cara dan metodologi yang luas untuk membuktikan rekod sabitan lampau seseorang itu dan tidak hanya tertakluk kepada peruntukan seksyen 400 KTJ sahaja.

8. Antaranya termasuklah cara yang diperuntukkan oleh Akta Keterangan 1950. Selain seksyen 400 KTJ, di dalam Akta Keterangan 1950, terdapat banyak cara untuk membuktikan rekod sabitan lampau seseorang OKT. Di antaranya adalah:

(i) **Seksyen 60 Akta Keterangan** memperuntukkan perkara-perkara yang berada di dalam pengetahuan peribadi seseorang itu.

60. Oral evidence must be direct

(1) Oral evidence shall in all cases whatever be direct, that is to say:

(a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

(b) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

(c) if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

(d) if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds.

(ii) Matters that the court takes **Judicial Notice** pursuant to s. 57 Evidence Act.

57. Facts of which court must take judicial notice

(1) The court shall take judicial notice of the following facts:

(g) the seals of all the courts of Malaysia all seals which any person is authorized to use by any law in force for the time being in Malaysia or any part thereof, all seals of which English courts take judicial notice, and the seals of Courts of Admiralty and maritime jurisdiction and of notaries public;

(m) the names of the members and officers of the court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates and other persons authorized by law to appear or act before it.

9. Berlandaskan kepada seksyen 60 dan 57 Akta Keterangan 1950, Mahkamah boleh menerima pembuktian rekod sabitan lampau OKT melalui keterangan lisan PW3/SP3 yang disokong dengan Ekshibit P9 berdasarkan alasan-alasan seperti berikut:

(i) SP3 merupakan seorang Penolong Pendaftar Mahkamah Rendah Kangar. SP3 telah memberikan keterangan bersumpah secara lisan untuk mengesahkan OKT mempunyai 2 rekod sabitan lampau di bawah seksyen 15(1)(a) ADB 1952.

(ii) SP3 sememangnya mempunyai akses terhadap segala dokumen dan rekod-rekod di Mahkamah Rendah.

(iii) Ekshibit P9 disahkan dan ditandatangani oleh SP3 setelah membuat semakan dengan **Rekod Mahkamah**.

(iv) Ekshibit P9 jelas mengandungi 2 rekod sabitan OKT di bawah seksyen 15(1)(a) ADB 1952.

(v) Rekod RJ2B yang dikeluarkan oleh Pendaftar Penjenayah Malaysia juga akan menyediakan rekod sabitan berdasarkan keputusan dan maklumat daripada Mahkamah juga. (emphasis added)

[15] In summary, the learned Deputy Public Prosecutor submitted that by virtue of s. 400 of the Criminal Procedure Code (Act 593) ("CPC"), in any inquiry, trial or other proceeding under the CPC, a previous conviction may be proved in addition to any other mode provided by any law for the time being in force.

[16] Hence, according to the said provision, it was submitted that there are many ways to prove one's previous conviction, such as by way of oral evidence under s. 60 (oral evidence must be direct) and judicial notice under s. 57 (facts of which court must take judicial notice) of the Evidence Act 1950 (Act 56).

[17] Pursuant to the above-mentioned provisions, it was also contended by the learned Deputy Public Prosecutor that the tendering of exh. P9 by the Assistant Registrar of the Kangar court is in accordance with the law and therefore, is admissible under the rule of evidence.

[18] Apart from establishing her position as the Assistant Registrar of the Kangar court who has access to the court's documents and records, no other evidence was offered by the prosecution on the qualification and competency of SP3 to confirm, to tender and to prove the appellant's previous convictions.

[19] The appellant on the other hand contended that the Assistant Registrar of the Kangar court was not a qualified and competent authority to confirm and to tender the two previous convictions of the appellant under s. 15(1)(a) of the DDA (exh. P9) in the court, as the only qualified and competent authority to prove one's previous conviction is the Registrar of Criminals for the Federation.

[20] Therefore, it was submitted by learned counsel for the appellant that the prosecution had failed to prove that the appellant had two previous convictions under s. 15(1)(a) of the DDA. Consequently, the appellant was not liable to be convicted and punished for the offence under s. 15(1)(a) of DDA which is punishable under s. 39C(1) of the DDA. Hence, the sentence imposed by the learned Sessions Court Judge under s. 39C(1) of the DDA ought to be set aside and substituted with a lesser punishment under s. 15(1)(a) of the DDA, in case the appellant's conviction under s. 15(1)(a) of the DDA is sustained.

[21] In his submission, learned counsel for the appellant had referred to the decision of this court in *Azizy Samsudin v. PP* [2020] 1 LNS 1725; [2020] MLJU 1967 and hence, contended that Puan Monica Joseph Gaisah who is the Assistant Registrar of the Kangar court (SP3) was not a qualified person to confirm and to tender the appellant's previous convictions under s. 15(1)(a) of the DDA. Learned counsel for the appellant had quoted the judgment of Arik Sanusi Yeop Johari JC as follows:

> [45] It is the considered view of this court, based on the above provisions it is clear that in order to prove one's previous conviction under any law in the country, it is within the power and competency of the Registrar of Criminals for the Federation or any officer appointed by the Yang di-Pertuan Agong pursuant to s. 3 of Act 7.
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> [46] Since SP3 is not appointed under Act 7 to confirm and to tender the appellant's previous conviction, this court is of the view that SP3 is not a qualified "officer" and competent authority within the ambit of Act 7. Therefore, this court finds that the learned Sessions Court Judge falls into error in accepting the evidence of SP3 relating to the two previous convictions of the appellant in Exhibit P10 and thereafter sentenced the appellant in accordance with the punishment provided for under s. 39C(1) of DDA.

[47] As SP3 is not a qualified and competent authority under the law to confirm and to tender the appellant's previous convictions as evidence in the court, this court finds that the prosecution has failed to prove a *prima facie* evidence under s. 39C(1) of DDA against the appellant. Hence, this court has substituted the sentence passed by the learned Sessions Court Judge under s. 39C(1) of DDA to 24 months imprisonment under s. 15(1)(a) of DDA.

[22] Based on the case cited above, the appellant's learned counsel submitted that under the Registration of Criminals and Undesirable Persons Act 1969 (Act 7) and s. 400 of the CPC, only the Registrar of Criminals for the Federation is vested with the power and authority to keep and maintain a register containing registrable particulars relating to the States of Malaysia and any country outside the Federation which includes Singapore. This does not include an Assistant Registrar of a court.

[23] Apart from *Azizy Samsudin v. PP* (*supra*), this court has also had the opportunity to decide on similar legal issues in the case of *Mohd Azmeer Yusnar Romli lwn. PP* [2020] 1 LNS 1681; [2020] MLJU 1905 and *PP v. Muhammad Zikiri Ramli* [2021] 1 LNS 704; [2021] MLJU 821.

[24] In answering the issue of whether SP3 is a qualified and competent authority to confirm, to tender and to prove the appellant's previous convictions before the Sessions Court, this court will refer to s. 400 of the CPC and the Registration of Criminals and Undesirable Persons Act 1969.

[25] For ease of reference, s. 400 of the CPC provides as follows:

How previous conviction or acquittal may be proved

400. (1) In any inquiry, trial or other proceeding under this Code a **previous conviction** or acquittal or an order directing any person to be under the supervision of the police **may be proved** in addition to any other mode provided by any law for the time being in force:

(a) **by an extract certified under the hand of the officer having the custody of the records of the court whether of Malaysia or the Republic of Singapore** in which that conviction or acquittal was had to be a copy of the sentence or order; or

(b) in case of a conviction either by a certificate signed by the officer in charge of the prison in Malaysia or the Republic of Singapore in which the punishment or any part of it was inflicted, or by production of the warrant of commitment under which the punishment was suffered, together with, in each of those cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

(2) In case the officer in charge of any prison shall state in any certificate signed by him that the fingerprints which appear on the certificate are those of the person to whom the certificate relates, that certificate shall be evidence of the fact so stated.

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(3) Every court shall presume to be genuine every document purporting to be a certificate of conviction and purporting to be signed by the officer in charge of any prison in Malaysia or the Republic of Singapore, and shall also presume that the officer by whom the document purports to be signed was when he signed it the officer in charge of the prison mentioned in that document. (emphasis added)

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[26] From the above-mentioned provision, it is clear that "previous conviction" may be proved by an extract certified under the hand of the officer having the custody of the records of the court whether of Malaysia or the Republic of Singapore. However, the CPC does not define who is "the officer having the custody of the records of the court whether of Malaysia or the Republic of Singapore".

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[27] As the CPC is a law of general application, reference has to be made to the Registration of Criminals and Undesirable Persons Act 1969, a specific law that governs matters pertaining to previous conviction, in order to determine who is the intended "officer having the custody of the records of the court whether of Malaysia or the Republic of Singapore", referred to in s. 400 of the CPC.

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[28] Based on the long title of the Registration of Criminals and Undesirable Persons Act 1969, the objective of the Act is "to consolidate and amend the law providing for the registration of certain criminals, banishees, expelees, deportees and restrictees and for other purposes connected with it.".

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[29] Pursuant to this long title, s. 7 of the Registration of Criminals and Undesirable Persons Act 1969 provides provision on the register of registrable particulars and the duties of the Registrar as follows:

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Register of registrable particulars to be kept

7. (1) Subject to s. 12 **the Registrar shall keep and maintain**:

(a) **a register containing registrable particulars** relating to the States of Peninsular Malaysia, Sabah and Sarawak in the Federal Capital;

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(b) **a register containing registrable particulars** relating to Sabah in Sabah; and

(c) **a register containing registrable particulars** relating to Sarawak in Sarawak.

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(2) **The Registrar may keep and maintain a register containing registrable particulars relating to any country outside the Federation** in respect of which an order has been made pursuant to s. 4 if the registrable particulars are forwarded to him by the Government of that country.

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[30] According to the said provision, the Registrar is authorised to keep and maintain a register containing registrable particulars relating to the States of Peninsular Malaysia, Sabah, Sarawak and any country outside the Federation including Singapore, as provided for under s. 400 of the CPC.

[31] The words "Registrar", "register" and "registrable particulars" in s. 7 of the Registration of Criminals and Undesirable Persons Act 1969 are defined in s. 2 of the same Act as follows:

(i) "Registrar" means the Registrar of Criminals and any other person or officer appointed under s. 3;

(ii) "register" means the register kept and maintained under s. 7; and

(iii) "registrable particulars" means the particulars of any conviction or sentence in respect of a registrable offence; the particulars of any order relating to banishees, expelees, deportees or restrictees; the name, description, photograph and finger impressions or classification of finger impressions of any person convicted of a registrable offence, or of any banishee, expelee, deportee or restrictee and others.

[32] The word "registrable offence" as found in the definition of "registrable particulars" is defined in s. 2 of the Registration of Criminals and Undesirable Persons Act 1969 to mean "any offence which is registrable under this Act as specified in the First and Second Schedules".

[33] Based on the First Schedule of the Registration of Criminals and Undesirable Persons Act 1969, all offences under the DDA have been prescribed as registrable offence under the Act. Hence, this would include the offence under s. 15(1)(a) of the DDA, as prescribed in the charge proffered against the appellant.

[34] In accordance with the above provisions, it is clear that the Registration of Criminals and Undesirable Persons Act 1969 is a specific Act enacted by the Parliament to provide for the registration of criminals. For this purpose, only the Registrar of Criminals is authorised under the Act to keep and maintain the particulars of any conviction or sentence in respect of a registrable offence as specified in the First and Second Schedules of the Act.

[35] As the Registration of Criminals and Undesirable Persons Act 1969 is a specific law regulating matters relating to the registration of criminals in this country, this court is of the view that the Act shall prevail over s. 400 of the CPC, which is a general law. Thus, the respondent's submission on the admissibility of one's previous conviction under s. 400 of the CPC and the Evidence Act 1950 cannot sustain.

[36] The Federal Court in the case of *Abdullah Atan v. PP & Other Appeals* [2020] 9 CLJ 151; [2020] MLJU 1244 has decided that if there is conflict between a specific law and a general law, the matter can be resolved in two ways, namely through the *maxim generalia specialibus derogant* or the doctrine of harmonious construction. In Her Ladyship's judgment, Tengku Maimun Tuan Mat CJ has stated as follows:

> Furthermore, the DDA is a specific Act relating to and dealing with trials in respect of dangerous drugs. The CPC, on the other hand, is a law of general application. Where there is a *conflict between a specific law and a general law, the conflict may be resolved in one of two ways. The first is via the maxim generalia specialibus derogant. The second is the doctrine of harmonious construction.*
>
> (emphasis added)

[37] Relying on the principles in *Abdullah Atan v. PP And Another Appeal* (*supra*), this court is of the considered view that since s. 400 of CPC, which is a general law, does not define who is the "officer" that can prove one's previous conviction, by reading such provision harmoniously with the Registration of Criminals and Undesirable Persons Act 1969, which is a specific law relating to the registration of criminals, it is apparent that the "officer" referred to in the CPC is the Registrar of Criminals appointed by the Yang di-Pertuan Agong under s. 3 of the Registration of Criminals and Undesirable Persons Act 1969, whose power among other things is to keep and maintain the particulars of any conviction or sentence in respect of a registrable offence as specified in the First and Second Schedules of the Act.

[38] According to the authorities cited above, it is clear that to prove one's previous conviction under any law in this country, it is within the power and competency of the Registrar of Criminals for the Federation or any officer appointed by the Yang di-Pertuan Agong pursuant to s. 3 of the Registration of Criminals and Undesirable Persons Act 1969, and no one else.

[39] Since there was no evidence that SP3 was appointed by the Yang di-Pertuan Agong pursuant to s. 3 of the Registration of Criminals and Undesirable Persons Act 1969, this court is of the opinion that SP3 had no *locus*, qualification and competency under the Act to confirm, to tender and to prove the appellant's previous convictions under s. 15(1)(a) of the DDA in the court.

[40] Therefore, it is the considered view of this court that exh. P9 which was tendered by the prosecution to prove the appellant's two previous convictions under s. 15(1)(a) of the DDA was inadmissible and had no evidential value. As a result, the conviction and sentence imposed by the learned Sessions Court Judge on the appellant under s. 15(1)(a) of the DDA which is punishable under s. 39C(1) of the same Act was wrong and not in accordance with the law and hence, should be substituted with a conviction and punishment under s. 15(1)(a) of the DDA.

[41] With regard to the punishment for the offence under s. 15(1)(a) of the DDA, it provides that any person found guilty of the said offence, shall be liable on conviction to a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years. Thus, the punishment is either in the form of a fine or an imprisonment.

[42] In this case, this court took note that the appellant had been in remand since 18 January 2018, the day he was arrested, until 27 November 2018, the day he was offered bail by the Sessions Court for RM5,000 with one surety. All in all, he had been in remand for 11 months. His trial was only commenced on 8 May 2019 and ended on 20 December 2019. After his conviction, the Sessions Court had allowed stay pending the appellant's appeal to the High Court.

[43] In passing the appropriate sentence, this court had taken into consideration that the appellant had spent 11 months in remand and he had no previous conviction. This court also took into consideration that under s. 15(1)(a) of the DDA, the court has the discretion to impose either a punishment of fine or an imprisonment.

[44] Since the appellant had been in remand for 11 months and being a first offender, this court is of the view that it would not be appropriate to put the appellant again behind bars. Therefore, a fine of RM3,000 from the maximum of RM5,000, in default five months imprisonment and two years police supervision under s. 38B of the DDA with effect from the date of the disposal of the appeal, would be the appropriate and just punishment imposed on the appellant, and it is not manifestly inadequate.

Conclusion

[45] Based on the reasons adumbrated above, the appellant's appeal was allowed and the whole decision of the learned Sessions Court Judge was set aside and substituted with a conviction and punishment of a fine of RM3,000, in default five months imprisonment under s. 15(1)(a) of the DDA and two years police supervision.